

IN THE MATTER OF:)	
)	
)	
JEFF HARRIS)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
RESPONDENT)	CASE NUMBER 07-016D
)	

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the “division”) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

II.

Jeff Harris (hereinafter “the Respondent”) is a resident of the State of Tennessee, and is the owner of On Higher Ground, a residential subdivision development, located in Sevier County, Tennessee (hereinafter “the site”). Service of process may be made on the Respondent at 3039 Shaconage Trail, Sevierville, Tennessee, 37876.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred,

or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondent has violated the Act.

V.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI). Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VI.

An unnamed tributary to Little Cove Creek and an unnamed wetland are “waters of the state,” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VII.

On September 16, 2003, division personnel investigated a complaint stating that construction activities at the site were causing soil to enter into a tributary to Little Cove Creek. Division personnel observed that construction activities had disturbed approximately five acres of land. An access road had been constructed from Little Cove Church Road up a hillside with construction activities underway along the road. Inadequate erosion prevention and sediment control measures (EPSC) had allowed eroded soil to migrate off site and into an unnamed tributary to Little Cove Creek. A file review determined that the Respondent had neither applied for nor obtained coverage under the TNCGP for these activities.

VIII.

On September 18, 2003, the division issued a Notice of Violation (NOV) to the Respondent describing the violations observed during the September 16, 2003, site inspection. The NOV instructed the Respondent to immediately provide temporary cover for the exposed

soils on site. Additionally, the NOV instructed the Respondent to submit a NOI and a Storm Water Pollution Prevention Plan (SWPPP) within 14 days of receipt of the NOV, in order to obtain coverage under the TNCGP.

IX.

On August 22, 2005, division personnel conducted a hydrologic determination of a watercourse at the site. This watercourse was determined to be a stream. Division personnel notified the Respondent of these findings on August 30, 2005.

X.

On October 21, 2005, the division received a NOI from the Respondent requesting TNCGP coverage be issued for construction activities at the site.

XI.

On December 22, 2005, the division issued a NOC under the TNCGP for construction activities at the site.

XII.

On January 6, 2006, the Respondent submitted an ARAP application requesting authorization under the General Permit for Construction and Removal of Minor Road Crossings (hereinafter the "ARAP GP for Minor Road Crossings") to construct a minor road crossing over an unnamed tributary to Little Cove Creek. The division issued written authorization for this activity on February 1, 2006.

XIII.

On February 14, 2006, division personnel conducted a site investigation and observed that improperly installed and inadequate EPSC measures at the minor road crossing and throughout the site were allowing disturbed soils to migrate into the unnamed tributary to Little Cove Creek. Division personnel also noted that the minor road crossing, authorized on February 1, 2006, had been constructed but the temporary crossing installed during this construction had not been removed.

XIV.

On May 11, 2006, division personnel conducted a follow-up inspection of the site and observed that inadequate EPSC measures throughout the site were allowing disturbed soils to migrate into the unnamed tributary to Little Cove Creek. EPSC inspection reports were not available on site as required by the TNCGP.

XV.

On May 25, 2006, the division issued a second NOV to the Respondent for violations observed during the inspections of February 14, 2006, and May 11, 2006. The NOV instructed the Respondent and the site contractors to attend a compliance review meeting at the Knoxville Environmental Field Office (K-EFO) on June 7, 2006. The NOV additionally instructed the Respondent to immediately implement appropriate Best Management Practices (BMPs) in order to comply with the requirements of the TNCGP and the ARAP GP for Minor Road Crossings. The NOV further instructed the Respondent to develop a Corrective Action Plan (CAP) to address the removal of sediment deposited in the unnamed tributary to Little Cove Creek, stream bank stabilization and the overall site stabilization measures. The CAP was to be submitted within 30 days of receipt of the NOV, and the measures therein were to be completed within 30

days of receiving written approval from the division. Documentation of completion of these measures was to be submitted to the division within 60 days of completion.

XVI.

During the June 7, 2006, compliance review meeting, the Respondent submitted an updated storm water management plan to the division. This plan included recent photographs of the site taken by the Respondent, showing BMPs implemented in response to the NOV of May 25, 2006. Also included were copies of EPSC inspection reports for the period of January through March 2006. During this meeting, the Respondent was instructed to attend the Fundamentals of Erosion Prevention and Sediment Control Workshop (Level I) and submit a copy of the certificate of completion by October 2006.

XVII.

On June 29, 2006, Vision Engineering and Development Services submitted a CAP to the division on behalf of the Respondent.

XVIII.

On July 18, 2006, the division completed the review of the CAP and determined it to be deficient in several areas. The Respondent was notified of these deficiencies and was provided guidance to correct the identified deficiencies on this date.

XIX.

On August 14, 2006, the Respondent acknowledged receipt of the deficiency letter and stated that the division's recommendations would be implemented and that an updated site plan would be submitted within 5 days.

XX.

On August 24, 2006, division personnel conducted a follow-up site inspection to determine progress in meeting the requirements discussed in the compliance review meeting of June 7, 2006. Division personnel observed that efforts had been made to stabilize the site and install appropriate EPSC measures, however, maintenance of the EPSC measures had not been conducted in a timely fashion.

XXI.

On August 30, 2006, the division issued a third NOV to the Respondent for the violations observed on August 24, 2006. This NOV contained specific instructions for the Respondent to address the violations observed on August 24, 2006.

XXII.

On October 23, 2006, the Respondent submitted photographic and written documentation of stream sediment removal activities conducted on the site. The photographs consisted of 'before and after' shots at the same locations. Division personnel judged this submittal to be of little value in documenting the extent of stream sediment removal activities.

XXIII.

On December 18, 2006, division personnel conducted a follow-up site visit to determine compliance with the TNCGP, ARAP, and the requirements of previously issued NOVs. Division personnel observed inadequate EPSC measures at numerous locations as well as additional sediment deposits in the unnamed tributary downstream of the sediment basin identified in the June 7, 2006, storm water management plan. The most recent EPSC inspection report available was from October 2006.

XXIV.

On December 20, 2006, the division issued a fourth NOV to the Respondent for the violations observed on December 18, 2006. This NOV instructed the Respondent to stabilize all areas of the site where work is complete or has temporarily ceased, implement the required EPSC monitoring and amend the site SWPPP.

XXV.

On May 18, 2007, division personnel met the Respondent at the site and noted that the EPSC measures in place had not been maintained and numerous areas of the site were still bare and unstable. Continuing sediment deposition into the unnamed tributary to Little Cove Creek was noted.

XXVI.

During the course of investigating this matter, the division incurred DAMAGES in the amount of SEVEN HUNDRED SEVENTY ONE DOLLARS AND SEVENTEEN CENTS (\$771.17).

VIOLATIONS

XXVII.

By conducting operations without coverage under the TNCGP, the Respondent has violated T.C.A. §§69-3-108(a) and 114(b), which state in part:

§69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment

works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XXVIII.

By failing to conduct EPSC inspections, maintain reports of EPSC inspections and failing to update the SWPPP as required by the TNCGP, the Respondent has violated T.C.A §69-3-114(b) as referenced above.

XXIX.

By violating the terms of the ARAP GP for Minor Road Crossings, the Respondent has violated T.C.A §69-3-114(b) as referenced above.

XXX.

By failing to properly install and maintain EPSC measures at a land disturbance activity, the activity described herein did or was likely to cause an increase in the discharge of wastes into the waters of the state. Therefore, the Respondent has violated T.C.A. §69-3-114(b) as referenced above and §69-3-108(b) which states in part;

§69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

XXXI.

By causing a condition of pollution, the Respondent has violated T.C.A. §69-3-108(b) as referenced above.

ORDER

XXXII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, immediately, establish and maintain effective EPSC measures on-site to ensure that sediment is not allowed to leave the site or enter waters of the state. These EPSC measures shall be maintained until such time as all land disturbance at the site is complete and erosion-preventive permanent cover is established. The Respondent shall, within 14 days of receipt of this ORDER, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the Knoxville-Environmental Field Office (K-EFO) at 3711 Middlebrook Pike, Suite 220, State Plaza, Knoxville, Tennessee 37921 and shall submit a copy of the written documentation and photographic evidence to the Water

Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.

2. The Respondent shall, within 30 days of receipt of this ORDER, submit a revised CAP detailing the manual methods to be utilized to remove accumulated sediment from the unnamed tributary to Little Cove Creek. The revised CAP shall be submitted to the Water Pollution Control Manager, K-EFO and a copy submitted to the E&C Section Manager, at the respective addresses shown in item 1, above.
3. The Respondent shall, within 30 days of written approval from the division, complete all actions outlined in the CAP and provide written and photographic documentation of the completion of these actions to the Water Pollution Control Manager, K-EFO and a copy submitted to the E&C Section, at the respective addresses shown in item 1, above.
4. The Respondent shall, within 30 days of receipt of this ORDER, remove the temporary road crossing from the unnamed tributary to Little Cove Creek in such a manner as to minimize the possibility of sediment discharge to waters of the state. Written and photographic documentation of the removal of the temporary crossing shall be submitted to the Water Pollution Control Manager, K-EFO and a copy submitted to the E&C Section, at the respective addresses shown in item 1, above.
5. The Respondent shall, within 6 months of receipt of this ORDER, but no later than December 31, 2007, attend a Fundamentals of Erosion and Sediment Control Workshop provided by the Tennessee Department of Environment and Conservation, and submit documentation of successful completion to the K-EFO and a copy to the E&C Section, at the respective addresses above. The Respondent should obtain certification for all

supervisory personnel who are expected to be responsible for land disturbance activities or erosion prevention and sediment control at the site. Information may be found on the program website at <http://www.tnepsc.org/>.

6. The Respondent shall, within 30 days of receipt of this ORDER, pay DAMAGES in the amount of SEVEN HUNDRED SEVENTY ONE DOLLARS AND SEVENTEEN CENTS (\$771.17).
7. The Respondent shall pay a CIVIL PENALTY of TWENTY THOUSAND DOLLARS (\$20,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00), payable to the division within 30 days of default.
 - b. If the Respondent fails to comply with any aspect of Part XXXII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), payable to the division within 30 days of default.
 - c. If the Respondent fails to comply with any aspect of Part XXXII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable to the division within 30 days of default.
 - d. If the Respondent fails to comply with any aspect of Part XXXII, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable to the division within 30 days of default.

- e. If the Respondent fails to comply with any aspect of Part XXXII, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable to the division within 30 days of default.
 - f. If the Respondent fails to comply with any aspect of Part XXXII, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
9. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 4th day of June, 2007.



Paul E. Davis, P.E.
Director of the Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109 and 69-3-115, allow any Respondent to secure review of this ORDER AND ASSESSMENT. To secure review of this ORDER AND ASSESSMENT, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this ORDER AND ASSESSMENT.

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Unit, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.